



Staff Report

Report To: Dan Best, Chief Administrative Officer
From: **Genevieve Scharback, Corporate Services Manager/Clerk**
Date: December 18 2017
Report: 22-2017
Subject: Bill 68 – Modernizing Ontario’s Municipal Legislation Act - Requirements and Timelines

Recommendations:

That South Huron Council receives the report from G. Scharback, Corporate Services Manager/Clerk re: Bill 68 – Modernizing Ontario’s Municipal Legislation Act - Requirements and Timelines; and

That Council consider By-Law #76-2017 in the By-Law section of the agenda to amend Procedural By-Law #79-2015 by revising the definition of a meeting and amending Appendix B to incorporate additional closed meeting exceptions; and

That Council provide direction to staff regarding future amendments to the procedural by-law to incorporate electronic meeting participation.

Purpose:

To provide Council with a follow up to the June 19, 2017 report regarding changes to municipal legislation in Bill 68.

Background and Analysis:

Bill 68 – Modernizing Ontario’s Municipal Legislation Act (MOMLA) is an extensive piece of legislation that affects a number of Acts including sections

in the Municipal Act, Municipal Conflict of Interest Act and Municipal Elections Act.

Bill 68 received Royal Assent on May 30, 2017; however, many sections of the Act were not proclaimed to be in force and effect on the date of Royal Assent and are being phased in over a period of time.

Key Changes – In Effect January 1, 2018

The following key changes need to be addressed by amending the current Procedural By-Law:

1. Definition of Meeting

Section 25 of the Act repeals Section 238(1) of the Municipal Act and replaces it with the following definition of "meeting":

"meeting" means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where;

- (a) A quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

This item requires a minor amendment to the procedural by-law definitions.

2. Electronic Meeting Participation

Section 238(2) of the Municipal Act is amended by adding the following subsection:

Electronic Participation

(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is open to the public to the extent and in the manner set out in the by-law provided that any such member shall not be counted in determining whether or not a quorum of members is present at any point in time.

(3.2) The applicable procedure by-law shall not provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is closed to the public.

This item is discretionary. Council may amend the procedural by-law to allow electronic participation but it is not mandatory. There are merits to this provision for councils or boards that represent wide geographical areas;

however, it requires clear parameters to be set out in the procedural by-law regarding the equipment and means acceptable for electronic attendance. There is no allowance for attending a closed session electronically. Council may receive information, such as a legal opinion, in closed session prior to making a decision in open session. A member attending electronically would not be privy to this information. Electronic participation would also result in every vote being a recorded vote to allow every participant to know how votes were cast when they are not present to see a show of hands.

South Huron Council members rarely miss meetings, and when they do they are not necessarily available to attend electronically.

I do not recommend including electronic participation at this time.

3. Closed Session

Section 239 of the Municipal Act has been amended to allow the following four new categories to go into closed session:

- h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

This section of the Municipal Act is set out in Appendix B to the current Procedural By-law, requiring this appendix to be amended.

4. Requirement to Pass Resolution Stating How A Closed Session Investigation Report Shall Be Addressed

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the

public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report. 2017, c. 10, Sched. 1, s. 27.

This change will not require any by-law amendments, but will require Council to pass a resolution stating a report regarding a closed session will be addressed.

5. Temporary Replacement, Member Of Upper-Tier Council

268 (1) Subject to subsection (2), the council of a local municipality may appoint one of its members as an alternate member of the upper-tier council, to act in place of a person who is a member of the councils of the local municipality and its upper-tier municipality, when the person is unable to attend a meeting of the upper-tier council for any reason.

(2) Subsection (1) does not authorize,

- (a) the appointment of more than one alternate member during the term of council;
- (b) the appointment of an alternate member to act in place of an alternate member appointed under subsection 267 (1) or (2);

(3) Despite clause (2) (a), if the seat of the member who has been appointed as an alternate member under subsection (1) becomes vacant, the council of a local municipality may appoint another of its members as an alternate member for the remainder of the council term.

This clause means that Council may appoint an alternate for the Mayor and Deputy Mayor to sit on County Council in their absence. The appointment is for the term of Council, with no substitutions if the alternate is unable to attend County Council.

Key Changes – In Effect March 1, 2019

The following changes that significantly affect municipalities will come into force and effect on March 1, 2019:

1. Code of Conduct

Section 223 of the Municipal Act will require all municipalities to establish a Code of Conduct.

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards.

- (2) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct.
- (3) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay an administrative penalty.
- (4) The Minister may make regulations prescribing one or more subject matters that a municipality is required to include in a code of conduct.

2. Policies Required

Section 270 of the Municipal Act requires that policies be established for the following matters;

- 2.1 The relationship between members of council and the officers and employees of the municipality.
- 7. The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.
- 8. Pregnancy leaves and parental leaves of members of council.

A number of changes to the Municipal Conflict of Interest Act also take effect on March 1, 2019 and will be detailed in future reports.

Operational Considerations:

N/A

South Huron's Strategic Plan:

Section 6.2.2 of the Municipality of South Huron 2015-2019 Strategic Plan identifies transparent, accountable and collaborative governance as a strategic objective.

Financial Impact:

N/A

Legal Impact:

N/A

Staffing Impact:

N/A

Policies/Legislation:

Modernizing Ontario's Municipal Legislation Act

Municipal Act
Municipal Conflict of Interest Act
Municipal Election Act
South Huron Procedural By-Law

Consultation:

Related Documents:

Respectfully submitted,

Genevieve Scharback, Corporate Services Manager/Clerk